

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

7 BRIAN C. POWERS,

8 Plaintiff,

9 v.

10 WASHINGTON DEPARTMENT OF  
11 CORRECTIONS, ELDON VAIL, RONADL  
12 FRAKER, BRENT CARNEY, JAY A.  
JACKSON, and JAMIE CALLEY,

13  
14 Defendants.

No. C11-5806 RBL/KLS

**ORDER DENYING MOTIONS TO  
COMPEL AND FOR EXTENSION OF  
DISCOVERY**

15 Before the Court are Plaintiff's Motions for Extension of the Discovery Deadline and to  
16 Compel Discovery. ECF Nos. 18 and 19. The Court finds the motions should be denied  
17 because Plaintiff did not include a certification in his motions that he conferred with counsel for  
18 Defendants before he filed his motions and because the evidence before the Court is that the  
19 motions are moot.

20 **BACKGROUND**

21  
22 Plaintiff Bryan Powers filed a civil rights complaint against the Defendants on October  
23 21, 2011. ECF No. 7. On January 23, 2012, Defendants received from Mr. Powers a discovery  
24 request titled "Plaintiff's First Request for Production of Documents." ECF No. 20, Exhibit  
25 1(Declaration of Brian J. Considine), ¶ 3. On February 16, 2012, Defendants served Mr. Powers  
26 with their objections and responses to his discovery request and made available to Plaintiff 2,571

1 pages of responsive documents. *Id.*, ¶ 4. A cover letter was attached to the discovery response  
2 informing Mr. Powers that he had the option of sending a representative to view the documents  
3 on his behalf, have the documents sent to him on a CD, or Defendants would provide copies of  
4 the requested records at a rate of 10 cents per page, in addition to postage costs. *Id.*, ¶ 4. On  
5 February 29, 2012, Defendants' counsel received a letter from Mr. Powers requesting that  
6 counsel send the responsive documents to Mr. Powers on CD. *Id.*, ¶ 5. Defendants' counsel  
7 failed to send the CD to Mr. Powers, but states that his failure to do so was an oversight and was  
8 not intentional. When he received a copy of Mr. Powers' motion to compel on May 21, 2012, he  
9 sent the CD containing the 2,571 pages of responsive documents, as well as a privilege log in the  
10 mail to Mr. Powers per his request. *Id.*, ¶ 6, 7. Mr. Powers never attempted to contact  
11 Defendants' counsel regarding his discovery request prior to filing his Motion. *Id.*, ¶ 8.

12  
13 In his motion for a thirty day extension of the discovery deadline, Plaintiff states that he  
14 has received no documents from his discovery requests sent to Defendants in January. ECF No.  
15 18. In his motion to compel, Plaintiff requests an order compelling the production of documents  
16 responsive to his discovery requests on CD. ECF No. 19. Neither motion contains a  
17 certification pursuant to Fed.R. Civ. P. 37(a)(2)(B).  
18

## 19 DISCUSSION

20 While a party may apply to the court for an order compelling discovery "upon reasonable  
21 notice to other parties and all persons affected thereby," the motion must also include a  
22 certification that the movant has in good faith conferred or attempted to confer with the person or  
23 party failing to make the discovery in an effort to secure the information or material without  
24 court intervention." Fed. R. Civ. P. 37(a)(2)(B). In addition, "[a] good faith effort to confer with  
25  
26

1 a party or person not making a disclosure or discovery requires a face-to-face meeting or a  
2 telephonic conference.” Local Rule CR 37(a)(2)(A).

3 It appears that Mr. Powers has received the relief requested in his motions. Defendants’  
4 counsel sent Mr. Powers the requested documents on CD on May 21, 2012. ECF No. 20, Exh. 1,  
5 at ¶ 7. Defendants’ counsel did not intentionally withhold any discoverable documents and his  
6 failure to send them earlier appears to have been an oversight. *Id.* at ¶¶ 6, 8. Additionally, Mr.  
7 Powers failed to confer, or attempt to confer, with Defendants’ counsel regarding the  
8 Defendants’ discovery responses prior to filing his motions pursuant to Fed. R. Civ. P. 37(a)(1).  
9

10 The Court anticipates that the parties will confer and make a good faith effort to resolve  
11 their discovery disputes without Court interference. If the parties cannot amicably resolve their  
12 discovery disputes, either party may then file a motion to compel. However, the motion must  
13 include a certification stating that their efforts were unsuccessful and shall identify those areas of  
14 disagreement that remain unresolved. The Court will not address any motion which lacks such a  
15 certification.  
16

17 Accordingly, it is **ORDERED**:

18 (1) Plaintiff’s motion for extension of time (ECF No. 18) and motion to compel (ECF  
19 No. 19) are **DENIED**.

20 (2) The Clerk of the Court shall send a copy of this Order to Plaintiff and to counsel  
21 for Defendants.  
22

23 **DATED** this 29<sup>th</sup> day of June, 2012.

24  
25 

26 Karen L. Strombom  
United States Magistrate Judge